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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

OLIVE W. LUTON,

Plaintiff and Appellant,

v.

WILLOW GLEN APARTMENTS,

Defendant and Respondent.

H044697

(Santa Clara County

Super. Ct. No. 2014-1-CV-272832)

Plaintiff challenges the trial court's enforcement of a settlement agreement and related judgment dismissing her case with prejudice. Finding no error, we will affirm the judgment.

I. BACKGROUND

Plaintiff sued defendant after twice falling and suffering injuries stemming from alleged negligent property management. The case was mediated and the parties, represented by counsel, signed a settlement agreement at the conclusion of the mediation. Defendant agreed to pay plaintiff \$100,000, and plaintiff agreed to execute a "full and complete" release prepared by defendant's attorney, and to execute and file a dismissal with prejudice upon payment. The agreement was "intended to be binding and enforceable," and it provided for the trial court to retain jurisdiction to enforce the settlement under Code of Civil Procedure section 664.6.

Later that month, plaintiff's attorney filed a notice of settlement in the trial court. He also sent a letter to plaintiff memorializing their post-settlement communications.

The letter documented plaintiff's intention to challenge the settlement agreement, as well as her refusal to sign the release prepared by defendant's attorney and approved by plaintiff's attorney. The release was part of a formal settlement agreement that included recitals and covenants addressing release and discharge, liens related to government benefits (Medicare, Medicaid, social security), tax obligations, attorney's fees, capacity, governing law, waiver under Civil Code section 1542, and non-disparagement. The letter advised plaintiff against challenging the settlement, urged her to comply with the agreement, explained why the settlement was in her best interest, and related that he would not represent her in an action to rescind the agreement. Shortly thereafter, defendant's attorney sent a settlement check made payable to plaintiff's attorney's trust account. The accompanying letter noted plaintiff's refusal to sign the release and her attorney's request to receive the settlement funds in trust pending dismissal.

Defendant moved to enforce the settlement agreement, and plaintiff, by then representing herself, filed a competing motion to "set aside dismissal." The trial court granted defendant's motion and denied plaintiff's motion. The case returned to the trial court's calendar several months later on an order to show cause re dismissal after settlement. Plaintiff then moved to set aside enforcement of the settlement agreement. (That motion was heard and denied soon after judgment was entered.)

The case was ultimately dismissed with prejudice. Plaintiff was ordered in the judgment to sign defendant's release, and her former attorney was ordered to release the settlement funds once she signed. Plaintiff has appealed from the judgment of dismissal, challenging the order enforcing settlement. (*Gregory v. Hamilton* (1978) 77 Cal.App.3d 213, 215 & fn. 1 [challenge to order enforcing settlement properly raised in appeal from judgment].)

II. DISCUSSION

Code of Civil Procedure section 664.6 (section 664.6) provides a summary procedure for the trial court to enforce a settlement agreement resolving litigation: Upon

a motion, the court may enter judgment pursuant to a written stipulation “signed by the parties outside the presence of the court ... for settlement of the case.” The trial court may also retain jurisdiction over the parties until the terms of the settlement are fully performed.

A settlement is not enforceable under section 664.6 unless the parties consent in writing to the material terms of the settlement. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810 (*Weddington*)). The material terms must be expressed in a reasonably definite manner. (*Id.* at p. 816.) “If no meeting of the minds has occurred on the material terms of a contract, basic contract law provides that no contract formation has occurred,” and there is no settlement agreement to enforce under section 664.6 (*Weddington*, at p. 797.)

Section 664.6 implicitly authorizes the trial court to interpret the terms and conditions to a settlement. (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 566.) To the extent the validity of a settlement agreement rests on a trial court’s factual determinations, those determinations are reviewed for substantial evidence. (*Weddington, supra*, 60 Cal.App.4th at p. 815.) When the issue turns on a failure of proof in the trial court and the party with that burden appeals, the question for the reviewing court is “ ‘whether the evidence compels a finding in favor of the appellant as a matter of law.’ ” (*Juen v. Alain Pinel Realtors, Inc.* (2019) 32 Cal.App.5th 974, 978–979.) Issues regarding contract formation, including the interpretation of written contractual terms, are legal questions we review independently. (*Id.* at p. 978; *Weddington*, at p. 815.)

A. THE MEDIATED SETTLEMENT AGREEMENT IS ENFORCEABLE

Plaintiff argues that the settlement agreement is unenforceable because it is vague, ambiguous, contradictory, and devoid of material terms including a performance date. We find the settlement agreement neither vague, ambiguous, nor inherently

contradictory: Without admitting liability, defendant agreed to pay plaintiff \$100,000 “as payment in full” for her lawsuit within 30 days after plaintiff executes “full and complete releases” prepared by defendant’s attorney. The scope of the releases is described with reasonable certainty: Plaintiff agreed to waive Civil Code section 1542, thus “releasing this defendant from known and unknown claims”; to release defendant from “all liens, medical or otherwise”; and “to indemnify and hold defendant harmless from all liens.” Plaintiff agreed to dismiss her lawsuit with prejudice upon receiving payment.

Plaintiff argues that the mediated settlement agreement deferred agreement on material terms to a later document and thus did not reflect a meeting of the minds. As we understand plaintiff’s argument, she cannot be held to the mediated settlement agreement because she never signed the more detailed formal agreement prepared by defendant’s attorney. But an agreement to sign a later document does not render the initial agreement unenforceable under section 664.6, absent an objective showing evidenced by the words of the initial agreement that the parties did not intend it to be final. (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1429–1430.) Here, the plain wording of the mediated settlement agreement reflects the parties’ objective intent to be bound by that agreement.

Relying on *Weddington*, plaintiff argues that the mediated settlement agreement was devoid of material terms, and that the trial court exceeded its authority under section 664.6 by “select[ing] and impos[ing] settlement terms.” (*Weddington, supra*, 60 Cal.App.4th at p. 797.) The issue in *Weddington* was the enforceability of a post-mediation settlement memorandum in which the parties “ ‘agree[d] to settle and dismiss’ ” on several terms, including formalizing a licensing agreement recognizing one party’s ownership and the other parties’ use of a sound library. (*Id.* at p. 799.) According to the record in *Weddington*, the ultimate form of the licensing agreement was “of central material importance to both sides” so that a meeting of the minds on the material terms of that component of the settlement was essential to the formation of an

enforceable settlement. (*Id.* at p. 800.) Because the terms of the licensing agreement were selected and imposed by a private judge instead of by mutual agreement of the parties, the judgment entered pursuant to section 664.6 was reversed. (*Weddington*, at pp. 818–819.)

In contrast here, plaintiff has failed to identify any material terms omitted from the mediated settlement agreement. She has also failed to establish that the more detailed agreement she refused to sign contains material terms beyond the scope of the mutual assent reflected in the mediated agreement. She has not shown that the details added by the formal document were “of central importance to both sides” and “essential to contract formation.” (*Weddington*, *supra*, 60 Cal.App.4th at p. 800.)

B. PLAINTIFF’S OTHER CONTENTIONS

Plaintiff argues that her attorney procured her agreement to the mediated settlement by duress and undue influence. In granting the motion to enforce settlement, the trial court found that a declaration prepared by plaintiff “demonstrates regret and remorse at having entered into the settlement but not undue influence or duress.” A decision of the lower court is presumed correct, and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see also *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574–575 [“a party challenging a judgment has the burden of showing reversible error by an adequate record”].) Plaintiff cannot meet her burden of proving error on appeal as to the trial court’s finding because she has not included the parties’ 2016 motions and supporting materials (including her declaration) in the record on appeal. Neither the mediated settlement agreement nor the letters written by counsel, which are included in the appellate record, demonstrate undue influence or duress.

The notice of settlement filed by plaintiff’s attorney does not demonstrate improper conduct undermining the integrity of the agreement, as plaintiff argues. Nor did defendant’s attorney “manipulate” plaintiff’s breach of the settlement agreement by

sending the settlement funds to her attorney knowing she refused to sign the release. She was already in breach of the settlement by refusing to sign the formal agreement and release. Defendant complied with the terms of settlement, and exercised its rights under section 664.6 to have the mediated settlement enforced.

III. DISPOSITION

The judgment is affirmed. Defendant is awarded costs on appeal.

Grover, J.

WE CONCUR:

Mihara, Acting P. J.

Danner, J.

H044697 - *Luton v. Willow Glen Apartments*